HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.4315 of 2006

Between:

Aziz Mohiuddin S/o late Mohd. Gouze Mohiuddin

Aged about 39 years, R/o Flat No.101,

B-Block, Skill Abode, H.No.11-5-417/41-B, Jaffar Bagh,

Red Hills, Lakdikapul, Hyderabad.

…Petitioner

AND

The Station House Officer, Saifabad Police Station, Lakdikapul,

Hyderabad & 2 others

….Respondents

Counsel for the Appellants : Sri P.Veera Reddy

Counsel for the Respondent No.1: Government Pleader for Home

Counsel for respondent Nos.2&3 : None

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:: ORDER ::

June 09, 2006

PER G.V.SEETHAPATHY, J

In this petition, the petitioner has prayed for quashing order dated 31.01.2006 passed by the Chief Metropolitan Magistrate, Hyderabad in Crl.M.P.No.560 of 2006 in S.R.No.363 of 2006.

The writ petitioner borrowed a loan of Rs.6,00,000/- from the second

respondent Corporation for purchase of a flat against mortgage of the same property and executed the loan agreement on 26.03.2002. The loan was repayable with interest at 11.75% per annum in 84 equated monthly instalments commencing from 01.04.2002. The petitioner paid the instalments for 21 months. Thereafter, he committed default. The second respondent got issued a legal notice dated 26.11.2004 demanding repayment of the outstanding loan amount due in a sum of Rs.6,13,023/-. The second respondent also issued a demand notice under Section 13(2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the Act') demanding payment of Rs.6,65,710/- cautioning the petitioner that on failure to pay, powers vested under Section 13(4) of the Act would be exercised. Thereafter, the second respondent filed an application in Crl.M.P.No.560 of 2006 in SR No.363 of 2006 before the Chief Metropolitan Magistrate, Hyderabad under Section 14 of the Act. By an order dated 31.01.2006, the Chief Metropolitan Magistrate, Hyderabad appointed an Advocate Commissioner to take possession of the secured assets and handover the same to the second respondent-Corporation herein.

The petitioner complains that the learned Chief Metropolitan Magistrate passed impugned order appointing an Advocate Commissioner without giving him notice and an opportunity of hearing and, therefore, the same is liable to be declared as vitiated due to violation of the rules of natural justice.

When the matter came up for admission before this Court on 20-03-2006, learned counsel for the petitioner filed an affidavit of the petitioner undertaking to repay the outstanding amount of Rs.6,65,710/- with interest. After taking cognizance of the said affidavit, notice was ordered to be issued to the respondents and an order of status quo was passed subject to the following conditions:

1. Within fifteen days, the petitioner shall deposit a sum of Rs.Two Lakhs with the respondent No.2/Corporation.
2. That the petitioner shall pay the balance amount with interest in two equated monthly instalments.

It was further directed that if the petitioner fails to comply with direction No.(1) above, the interim order shall stand vacated automatically and the writ petition shall be liable to be dismissed on that ground alone.

On 20.04.2006, learned counsel for the petitioner reported that his client has deposited a sum of Rs.2 lakhs in accordance with the order dated 20.03.2006. The matter was then adjourned to 09-06-2006 with a direction to the petitioner to deposit the balance amount within the time fixed by the Court.

On the next date of hearing i.e., 09-06-2006, learned counsel for the petitioner gave out that the balance amount has been deposited with the Corporation.

The aforesaid statements of the learned counsel for the petitioner have not been controverted by the learned counsel for the Corporation.

In view of the above development, we deem it proper to set aside the direction given by the Chief Metropolitan Magistrate, Hyderabad for appointment of Advocate Commissioner to take possession of the property in question. Ordered accordingly.

The writ petition is allowed in the manner indicated above. The parties are left to bear their own costs.

G.V.SEETHAPATHY, J

G.S.SINGHVI, CJ

09.06.2006

RAR/svs

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

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WRIT PETITION NO.4315 of 2006

(Order of the Bench prepared by

Hon'ble Sri Justice G.V.Seethapathy)

Dated :09.06.2006

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

P.D. Judgment

In

WRIT PETITION NO.4315 of 2006

(Order of the Bench prepared by

Hon'ble Sri Justice G.V.Seethapathy)

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The Hon'ble the Chief Justice

For your Lordship's kind perusal.